

<b>Pre-Settlement Finance, LLC v Woods</b>
2009 NY Slip Op 30084(U)
January 5, 2009
Supreme Court, New York County
Docket Number: 601204/2008
Judge: Emily Jane Goodman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN

PART 17

Justice

Index Number : 601204/2008

PRE-SETTLEMENT FINANCE, LLC

VS.

WOODS, CHARITY

SEQUENCE NUMBER : # 001

DISMISS

INDEX NO. 601204-08

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

*and AWS motion*

Upon the foregoing papers, it is ordered that this motion

*is decided*

*pc attached*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**  
JAN 16 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 1/5/09

EMILY JANE GOODMAN J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 17**

-----X  
PRE SETTLEMENT FINANCE, LLC, a New York  
Limited Liability Company

Index No 601204/2008

Plaintiff,

-against-

CHARITY WOODS, LAW OFFICE OF LLOYD  
HEILBRUNN and LLOYD J. HEILBRUNN, ESQUIRE  
Individually

Defendants.  
-----X

**Emily Jane Goodman, J.S.C.:**

Defendant Lloyd J. Heilbrunn and the Law Office of Lloyd J. Heilbrunn (which Heilbrunn states in not a legal entity subject to suit) (collectively the "Attorney Defendant") moves to dismiss this action based on lack of minimum contacts. Plaintiff opposes the motion, and cross moves to amend the complaint. Plaintiff claims that even if no minimum contacts exist, the Attorney Defendant should be bound (1) as a non-signatory to an agreement signed by his client Woods, containing a forum selection clause, (2) because the Attorney Defendant signed an Acknowledgment of Authorization, and (3) because the Attorney Defendant committed a tortious act outside of the state, causing injury to Plaintiff in New York, as the result of Plaintiff being a New York corporation. The motion to dismiss is granted and the cross motion to amend is denied. The remainder of the action is transferred to Civil Court, pursuant to a 325 (d) order, separately signed.

In this action, Plaintiff seeks to recover damages as the result of an advancement of \$5,000 to Defendant Woods pursuant to an agreement Woods signed in Florida, in connection

with a Florida personal injury action where she was represented by the Attorney Defendant. The agreement, entitled Plaintiff's Agreement to Pay Proceeds Contingent on Successful Settlement, Judgment or Verdict and Receipt of Proceeds: Agreement to Assign Proceeds, dated October 20, 2005 (Agreement), contains a forum selection clause in favor of New York. It is undisputed that the Agreement was not signed by the Attorney Defendant. Plaintiff has also failed to dispute Heilbrunn's affidavit that he does not practice law in New York and that he lacks minimum contacts with New York under CPLR 302. In fact, Plaintiff's attorney concedes "I do not have such information to make a determination about that."

"It is well settled that parties to an agreement may consent to the jurisdiction of a court which would otherwise not have personal jurisdiction over them" (Banco do Comercio e Industria de Sao Paulo S.A. v Esusa Engenharia E Construcoes S.A., 173 AD2d 340, 341 [1<sup>st</sup> Dept 1991]). It is also settled that "it is the policy of the courts of this state to enforce contractual provisions for choice of law and selection of a forum for litigation" (Koob v IDS Financial Services, Inc., 213 AD2d 26, 32 [1<sup>st</sup> Dept 1995]; Brooke Group Ltd. v JCH Syndicate 488, 87 NY2d 530, 534 [1996] [forum selection clauses are enforced because they provide certainty and predictability in the resolution of disputes]; Sterling National Bank v Eastern Shipping Worldwide, Inc., 35 AD3d 222, 223 [1<sup>st</sup> Dept 2006]).

"Contractual forum selection clauses are prima facie valid and enforceable unless it is shown by the challenging party to be unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or it is shown that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of his day in court" (Premium Risk Group, Inc. v Legion Insurance Company, 294 AD2d at 346; Boss v

American Express Financial Advisors, Inc., 15 AD3d 306, 307 [1<sup>st</sup> Dept 2005] affd 6 NY2d 242 [2006]; Fidelity & Deposit Company of Maryland, 209 D2d 195, 195 [1<sup>st</sup> Dept 1994]; British West Indies Guaranty Trust Company, Ltd. v Banque Internationale a Luxembourg, 172 AD2d 234, 234 [1<sup>st</sup> Dept 1991] [forum selection clause upheld where the contractual provision was clear and unambiguous, and there was no evidence of fraud and overreaching]).

The Court need not decide whether the clause is valid because the motion is granted based on lack of minimum contacts. Plaintiff has cited to the few rare exceptions where non-signatory to an agreement containing a forum selection clause may enforce the clause if the relationship between signatory and non-signatory is “sufficiently close” (see, e.g., Dogmoch Intl. v Dresdner Bank AG, 304 AD2d 396 [1st Dept 2003] [non-signatory parent could enforce subsidiary’s accounts agreements containing a forum selection clause because of their “close relationship”]); In re Lloyd’s Am. Trust Funding Litigation, 954 F Supp 656 [SDNY 1997] [non-signatory Citibank could not enforce Lloyd’s agreement containing a forum selection clause because there was no showing it controlled or was otherwise “sufficiently close” to Lloyd’s]). Plaintiff also cites to federal courts cases outside of New York holding that a non-signatory can be bound by such an agreement if the parties are closely related. However, all of the cases cited by Plaintiff involve corporate subsidiaries or companies which control other companies. Plaintiff has cited no case law holding that a non-signatory attorney is bound to an agreement signed by his or her client, nor even a rationale as to why that should be the case. In fact, it appears that to do so would run counter to the Florida Bar’s rules prohibiting an attorney from co-signing a financing agreement or guaranteeing a transaction such as this one. Further, the Acknowledgment of Authorization signed by the Defendant Attorney does not contain a forum

selection clause and cannot support jurisdiction. To the extent that Plaintiff complains that the Defendant Attorney violated the Florida Rules of Professional Conduct, that issue (assuming it has any merit) should be raised in Florida .

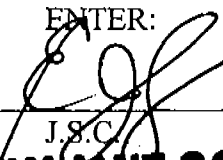
For the foregoing reasons, it is hereby

**ORDERED** that the motion to dismiss is granted as to LAW OFFICE OF LLOYD HEILBRUNN and LLOYD J. HEILBRUNN, ESQUIRE, Individually, and the Clerk is directed to sever said Defendants from the action and enter judgment in favor of said Defendants dismissing the complaint, with costs and disbursements as taxed by the Court; and it is further

**ORDERED** that the remainder of the action against defendant Woods is transferred to Civil Court pursuant to a separately signed 325 (d) order.

**This Constitutes the Decision and Order of the Court.**

DATED: January 5, 2009

ENTER:  
  
\_\_\_\_\_  
J.S.C.  
**EMILY JANE GOODMAN**

**FILED**  
JAN 16 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Fm. TS-4  
w/o consent  
325(d) CPLR

At an Individual Assignment Part 17 of the Supreme Court of the State of New York, held in and for the County of New York, City and State of New York, on the 5th day of January, 2009

P R E S E N T:

HON. **EMILY JANE GOODMAN**

Justice

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PRE SETTLEMENT FINANCE, LLC, a New York  
Limited Liability Company

vs.

Charity Woods, Law Office of Lloyd Heilbrunn and  
Lloyd J. Heilbrunn, Esquire, Individually  
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County Clerk's Index No. 601204/08

PRE-NOTE OF ISSUE

ORDER OF TRANSFER

It appearing that the Civil Court of the City of New York has jurisdiction of the parties to this action and pursuant to Rule 202.13(a) of the Uniform Civil Rules for the Supreme Court and the County Court, it is

ORDERED, that this cause bearing Index Number 601204/08 be, and it hereby is, removed from this court and transferred to the Civil Court of the City of New York, County of New York, and it is further

ORDERED, that the clerk of the New York County shall transfer to the clerk of the Civil Court of the City of New York, County of New York, all papers in this action now in his possession, upon payment of his proper fees, if any, and the clerk of the Civil Court of the City of New York, County of New York, upon service of a certified copy of this order upon him and upon delivery of the papers of this action to him by the clerk of the County of New York, shall issue to this action a Civil Court Index Number without the payment of any additional fees, and it is further

ORDERED, that the above-entitled cause be, and it is hereby, transferred to said Court, to be heard, tried and determined as if originally brought therein but subject to the provisions of CPLR 325(d).

ENTER:



ISC  
**EMILY JANE GOODMAN**

**FILED**  
JAN 16 2009  
COUNTY CLERK'S OFFICE  
NEW YORK